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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,085	05/18/2004	Garry Tsaor		5652

29745 7590 08/09/2005

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EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/849,085	Applicant(s) TSAUR, GARRY	
	Examiner John Sipos	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). *

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's arguments have been considered but are not persuasive and therefore the rejections made in the last Office action are repeated.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claim 1 is rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of the Admitted Prior Art. The patent to Seifert shows the forming of a fluid dispenser comprising heat-sealing one end of the tube 14, filling the tube, sealing the other end of the tube 17 and affixing an applicator 32 at one end of the tube (column 2, line 62 et seq.).

As was stated in the last Office action, the use of fixtures to hold a plurality of containers is well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, the use of such a fixture is considered as an admission of prior art. It would have been obvious to one skilled in the art to use tube-holding fixture of the Admitted Prior Art in the process of Seifert to allow the holding of a container while freeing the hand of the operator and to handle more than one container.

Claim 2 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of Bainbridge (1,641,408). The patent to Seifert lacks the use of score line but does disclose the use different container materials as weakening means to ease the opening of the container (see column 3, line 58 et seq.). The patent to Bainbridge shows the use of score line 3 in a small container that permits the user to easily open the container. It would have been obvious to one skilled in the art to substitute the score line opening means of

Bainbridge for the opening means of Seifert in order to simplify the opening mechanism and not require different materials for different parts of the container.

Claims 3-7 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of Baibridge (1,641,408) and further in view of the Admitted Prior Art.

As was stated in the last Office action, the removal of excess liquid from a container (claims 3 and 5), the use of more than one substance in a single container (claim 4-7) and the centrifuge of a container (claims 6 and 7) are well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, these are considered as an admission of prior art. It would have been obvious to one skilled in the art to remove excess liquid in the tubes of Seifert to allow the forming of a better seal; to use of more than one substance in the process of Seifert to allow the packaging of mixable products; and to centrifuge the tubes of Seifert to mix the contents as taught by the Admitted Prior Art.

Claims 8-11 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348).

The removal of excess liquid from a container (claims 3 and 5), more than one substance in a single container (claim 4-7) and the centrifuge of a container (claims 6 and 7) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of the Seifert operation would have been obvious to one skilled in the art for the known benefits of each modification. For example, removing excess liquid allows the forming of a better seal at the container end; the use of more

than one substance permits the packaging of mixable products; and centrifuge of the container permits the mixing of the container.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered. Applicant's arguments regarding the rejections are not convincing since they are analysis of the references regarding subject matter that is disclosed in Seifert but which is not recited in the instant claims. Applicant argues that the tube of the instant invention seals only one end of the tube while Seifert teaches and requires the sealing of both end of its tube. Furthermore, it is argued that since Seifert's tube and method of sealing at both ends is required for its invention, the reference teaches away from the instant invention. The position of the examiner is that the process set forth in the claims does not require the sealing of only one end of the tube and leaving the other open. Claim 1 sets forth a process in terms of "comprising the steps of", i.e. other additional steps may be present and merely recites "sealing one end of the tube". No mention is made of the other end. The claims therefore read on the reference to Seifert since it does disclose all the process steps claimed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

Art Unit: 3721

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(571) 273-8300**.



John Sipos
Primary Examiner
Art Unit 3721

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